

MEMORANDUM OF UNDERSTANDING  
NEW ATASCADERO LIBRARY

This Memorandum of Understanding ("Memorandum") is entered into this 9th day of November, 2010, by and between the County of San Luis Obispo, a body corporate and politic, (hereinafter referred to as "County") and the Atascadero Friends of the Library, a 501(c)(3) charitable corporation organized under the law of the State of California (hereinafter referred to as "the Friends").

RECITALS

WHEREAS, the County currently operates a library in Atascadero, assisted by the volunteer efforts of the Friends, located at 6850 Morro Road;

WHEREAS, the current Atascadero library is approximately one-half the size of a facility needed to serve the community of Atascadero and surrounding areas;

WHEREAS, the County has plans to build a 7,000 square foot One Stop Center in the North County to locate offices intended for the Assessor, Clerk Recorder and Planning and Building Departments of the County;

WHEREAS, real property at 6555 Capistrano Avenue, Atascadero is available for sale by its owners. The real property is approximately 1.63 acres and contains a 21,956 square foot building shell and related improvements (the "Capistrano Property");

WHEREAS, there is substantial community support and interest in the purchase and development of a new library of approximately 15,000 square feet at the Capistrano Property (the "Project");

WHEREAS, the County desires to build a One-Stop Center in Northern San Luis Obispo County for joint occupation by the County Assessor, County Clerk-Recorder and the County Planning and Building Departments. It is anticipated that in lieu of building a 7,000 square foot One Stop Center, those could occupy a portion of the Capistrano Property;

WHEREAS, in April 2010, the County secured an independent appraisal of the Capistrano Property and the County Board of Supervisors has authorized the County's real property negotiator to commence negotiations to purchase the Capistrano Property;

WHEREAS, the Board of Supervisors adopted the Fiscal Year 2010-2011 Budget Goals and Policies, including policy number 2 under section B – Capital Projects, which states in part "Consider funding new library buildings or major improvements to existing libraries only if at least 50% of the cost of the project is provided by the community in which the facility is located.";

WHEREAS, the County and the Friends desire to enter into this Memorandum to document their respective roles and responsibilities in furtherance of the purpose of this Memorandum, as set out in Section 2 below.

NOW, THEREFORE, the parties agree as follows:

1. RECITALS. The recitals as set forth above are incorporated herein by reference, as though set forth at length.
2. PURPOSE. The purpose of this Memorandum is to memorialize the roles and responsibilities of the County and the Friends with respect to purchasing the Capistrano Property, developing a library facility at that site, and funding responsibilities.
3. TOTAL PROJECT COST. The total estimated Project cost will be approximately \$8.5 million. Based on the square footage of the anticipated occupancy, the Library would be 68% (or approximately \$5.8 million) and the County offices would be 32% or approximately \$2.7 million. This total estimated Project cost includes the purchase of the Capistrano Property and tenant improvements required to convert this building to Library and County office use, (hereinafter, "Total Project Cost"). The County and the Friends agree to share equally in the funding of the Library share of this project, pursuant to Board of Supervisors adopted budget goal and policy number 2, Section B – Capital Projects (noted above). The County will be responsible for the remaining costs.
4. DEDICATION OF CERTAIN ASSETS.
  - 4.1 In 1995 the County purchased two vacant lots (the "Lots") adjacent to the current Atascadero library at 6850 Morro Road, City of Atascadero ("Morro Road Property") for future expansion of the existing library building at a cost of approximately \$263,000. The parties anticipate that the Lots will be sold and the proceeds used to offset the cost of the purchase price and tenant improvements associated with the Library share of the Capistrano Property, as described in Section 3 above.
  - 4.2 In April, 2010, the County received appraisals of the Capistrano Property, the Morro Road Property and the two Lots. The cost of these appraisals (\$9,500) was shared 50/50 with the Friends.
  - 4.3 The County agrees that one hundred percent (100%) of the net proceeds from the sale of the Lots and the existing Atascadero Library property (Morro Road Property) will be used to offset the purchase price and tenant improvements associated with the Library share of the Capistrano Property, with the Friends receiving a credit of fifty-percent (50%). The Library share of the Total Project Cost less the net proceeds from these sales will be hereinafter referred to as "Net Project Cost." The total estimated proceeds from the sale of the two lots and the Morro Road Property is \$1.6 million, based on the appraisals of these properties noted in Section 4.2.

- 4.4 It shall be the responsibility of the County to market and sell the Morro Road Property such that there is minimal disruption in library services at the current location. The timing of the sale of the vacant Lots is less critical because such a sale is not expected to impact continuation of current library services in Atascadero.
- 4.5 Sale of the Morro Road Property may occur once the Friends have raised their 50% contribution to the Net Project Cost. At this time the amount the Friends will need to raise is estimated to be \$2,060,000.
- 4.6 It is assumed that the sale of the Morro Road Property will not be completed until after tenant improvements to the Capistrano Property are completed and the Library is ready to move into this new facility.
- 4.7 Should the net proceeds from the sale of the Morro Road Property and Lots yield a higher level of credit than is indicated by the appraisals described in Section 4.2 the County will reimburse the Friends, without interest, in an amount equal to 50% of the difference between the appraisal and actual net proceeds. Such payment will be made upon the close of escrow of the sale of the Morro Road Property and/or Lots, whichever occurs later, and is conditioned on the Friends raising their fifty percent (50%) share of the Net Project Cost.
- 4.8 Should the Net Project Cost exceed the amount calculated based upon the appraisals of the Morro Road Property and the Lots and the estimated cost of the tenant improvements on the Capistrano Property, the Friends agree that they will pay their fifty percent (50%) share of the actual Net Project Cost.

5. PURCHASE OF THE CAPISTRANO PROPERTY.

- 5.1 The County will provide fiscal oversight of the purchase of the Capistrano Property, and shall be the sole record title owner of the property.
- 5.2 The Friends are not authorized to negotiate on behalf of the County to purchase the Capistrano Property.
- 5.3 In June 2009, the Board of Supervisors set aside \$3 million (to cover the County's share of the estimated cost to expand the Atascadero Library) which may be used toward the purchase and development of the Capistrano Property, in the event that a sale can be negotiated. It is intended that the Library occupy approximately 15,000 square feet of the Capistrano property (about 68% of the total square footage), with the Library occupying the entire first floor (approximately 11,000 square feet) and about 4,000 square feet of the second floor.
- 5.4 Upon entering escrow, the Friends shall transfer their 50% share of the purchase price for the Library portion of the facility minus the estimated net proceeds from the sale of the Lots and the existing Atascadero Library property to the County. These funds will be placed in the project fund that is maintained by the County and will be used almost immediately to purchase the Capistrano Property. See attached Exhibit A.

- 5.5 Should the County purchase the Capistrano Property, the County and the Friends shall share the costs associated with the on-going maintenance of the property and landscaping (34% will be paid by the Library, 34% will be paid by the Friends and 32% will be paid by the County, reflecting the proportional share of the Capistrano Property for each use). The estimated cost for such maintenance is between \$800 and \$1,000 per month. The County shall be responsible for the actual maintenance of the Capistrano Property, which shall be maintained in the same condition as when it is purchased, and until such time as the property is open to the public for use as a library or otherwise sold, leased or put to another use pursuant to Section 8.4 of this Memorandum. Relevant maintenance costs include landscape maintenance, weed abatement, water, and electrical for exterior lighting, to be paid on a quarterly basis. From and after the date the Capistrano Property is opened for use as a public library, the obligations of the Friends under this Section shall cease.
- 5.6 Should the County purchase the Capistrano Property, the County shall allow the Friends to place appropriate temporary signage on the property to encourage community fundraising. The Friends shall provide the County examples of signage. The County shall have the right to reasonably approve such signage before allowing such signage to be installed. In no event shall the Friends install any permanent signage during the fundraising campaign. Such signs shall comply with all local and state laws, rules and regulations relating to signage.
- 5.7 Should the County purchase the Capistrano Property, the County shall allow the Friends access to the property from time to time in order to conduct special fundraising activities. Friends shall notify County in advance of event regarding the nature and timing of the event. Friends shall provide \$1,000,000 Liability Insurance coverage per event, with the County named as additional insured.

6. TENANT IMPROVEMENTS TO THE CAPISTRANO PROPERTY.

- 6.1 The County is solely responsible for selecting and hiring professional consultants to provide architectural, engineering, and construction services and at a schedule of its own discretion, in consultation with the Friends.
- 6.2 The County, after the purchase of the Capistrano Property, may proceed with hiring the architect that has been selected by the Steering Committee to develop conceptual interior design and drawing, to help the Friends' fund raising efforts. The Friends will pay their 50% share of the cost to produce these conceptual design drawings (estimated to be between \$15,000 and \$23,000) as soon as they have raised these funds but in no event later than one (1) year after said architect is commissioned to perform such work.
- 6.3 The County is under no obligation to proceed with complete schematic design and preparation of construction documents until the Friends have raised 80% of their share of the Net Project Cost (estimated to be \$2,060,000) excluding furniture and equipment costs. These funds contributed must be in cash – no pledges will be accepted as a contribution.

- 6.4 The County is under no obligation to proceed with the construction of the tenant improvements until the Friends have raised their entire 50% share of the Net Project Cost in cash.
- 6.5 The Friends shall donate one-half (1/2) of the Net Project Cost to the County within twenty-four (24) months from the closing date on the purchase of the Capistrano Property, unless there is mutual agreement between the County and the Friends to extend the time frame.
- 6.6 At construction conclusion, the Friends of the Library and the Library will equally share the costs of the furniture and equipment for the Library portion of the new building.

7. PROJECT MANAGEMENT

- 7.1 The County is responsible for completion of the design and construction phases of the Project.

8. DUTIES OF THE FRIENDS.

- 8.1 The Friends general purpose is to engage in activities that encourage public use and enjoyment of library services, which focus public attention on library needs, and which assist in the raising of funds, donations, endowments, and bequests.
- 8.2 The Friends agree to fulfill their obligations of documenting, accounting and reporting the capital campaign contributions made to them.
- 8.3 The Friends may maintain the funds it will raise for capital contributions to the Project in one or more interest-bearing accounts. The Friends will warrant to the County that funds are on deposit. The Friends further agrees to transfer funds to the County when needed for costs specified in this MOU.
- 8.4 If the Friends are unable to raise their one-half of the Net Project Cost within twenty-four (24) months of the closing date on the purchase of the Capistrano Property, and there is no mutual agreement to extend the time, the County has no further obligation to develop the Capistrano Property into a library and may, at its sole discretion, sell, lease or otherwise use the Capistrano Property.
- 8.5 If the Friends are unable to raise their one-half of the Net Project Cost within twenty-four (24) months of the closing date on the purchase of the Capistrano Property, and there is no mutual agreement to extend the deadline to raise such funds, the County shall reimburse the Friends for the sums the Friends have contributed to the County towards the Net Project Cost. The County shall pay said funds to the Friends within ninety (90) days of the expiration of the deadline for the Friends to raise their one-half of the Net Project Cost. Such sums shall not include any contribution of the Friends toward initial work for programming, the expense for development of conceptual drawings by the architect nor costs incurred by the Friends towards maintaining the Capistrano Property and landscaping pursuant to Section 5.6 above.



- 8.6 All donor recognition shall be consistent with the Donor Recognition Policy for the San Luis Obispo County Library Capital Campaigns adopted on November 2, 2010. If/when the Board of Supervisors develops and approves a Countywide Recognition Policy for Library and/or other County buildings, the Library's Donor Recognition Guidelines shall be in agreement with that countywide Policy.

9. COUNTY AND THE FRIENDS JOINT RESPONSIBILITIES.

- 9.1 Each party shall be responsible for designating a person to act as a liaison with the other party and will provide regular updates at least every other week unless otherwise mutually agreed to.
- 9.2 An Steering Committee comprised of representatives from the County and the Friends shall be responsible for reviewing and providing input regarding proposed design standards and building designs. The Steering Committee shall meet on an as-needed basis.

10. GENERAL UNDERSTANDING, AMENDMENTS. This Memorandum and its Exhibits, if any, constitutes an agreement by the parties about their respective roles and responsibilities regarding expansion of the library in Atascadero. The parties have entered into this Memorandum in good faith and fully intend to carry out the responsibilities described herein. This Memorandum may only be amended by written agreement signed by all parties

11. INDEMNIFICATION. The County and the Friends shall mutually indemnify, defend and hold harmless each other, their officers, agents, employees, and supervisors, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind ("Claims") arising in any manner out of the negligent or willful misconduct of either party or their agents in the performance of this Memorandum, except to the extent of Claims that result from the sole negligence or willful misconduct of the other party.

Approved by the Board of Supervisors this  
9th day of November, 2010.

**FRANK R. MECHAM**

*Chairman, Board of Supervisors, County of  
San Luis Obispo, State of California*

ATTEST:

**JULIE L. RODEWALD**

Clerk of the Board of Supervisors

By: Gandy Currens  
Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT:

**WARREN R. JENSEN**

County Counsel

By: Shanna G. Mabe

Deputy County Counsel

Date: 10/29/2010

ATASCADERO FRIENDS OF THE LIBRARY

By: Gerenda Ernst  
Signature

Gerenda Ernst, President  
Print Name, Title

By: Eileen O'Grady  
Signature

EILEEN O'GRADY, Vice President  
Print Name, Title

Attachments:  
Exhibit A

## Exhibit A

### Estimated Total Cost of Project:

Purchase of Property	\$	3,415,000.00
Tenant Improvements	\$	4,996,500.00
	\$	<u>8,411,500.00</u>

### Estimated Share of Total Costs

Library is responsible for 68% of total costs as it will occupy 68% of the building  
Per Board Policy - the 68% - it must be shared 50-50 between Friends of the Library and Library Budget  
Other County agencies will share rest of the building and the rest of the cost

\$ 5,719,820.00 (68% of total estimated costs)

Library	Friends of the Library
\$ 2,859,910.00	\$ 2,859,910.00
\$ (800,000.00) *	\$ (800,000.00) *
\$ <u>2,059,910.00</u>	\$ <u>2,059,910.00</u>

\*minus estimated sale of existing library property (1.6 M split 50-50)

### 5.4 of MOU - Purchase only.

Cost to purchase the Property - \$3,415,000.00

Library portion of purchase cost is 68% or \$2,322,200.00

Library	Friends of the Library
\$ 1,161,100.00	\$ 1,161,100.00
\$ (800,000.00)	\$ (800,000.00) **
\$ <u>361,100.00</u>	\$ <u>361,100.00</u> Due at opening of escrow

\*\*The Library will credit the FOL its share of the estimated revenue from the existing library property, and will cover this amount when purchasing the new property.  
The Library will recover this amount upon the sale of the current library.

### Estimated Remaining Funds to be Raised

Library	Friends of the Library
\$ 2,059,910.00	\$ 2,059,910.00
\$ (361,100.00)	\$ (361,100.00) First installment for purchase
\$ <u>1,698,810.00</u>	\$ <u>1,698,810.00</u>